

AMENDMENTS TO THE DRAWINGS

Applicants hereby submits a replacement sheet for sheet 1 of 1 in the application.

Attachment: 1 (One) Replacement Sheet

REMARKS

Claims 1-40 are all the claims pending in the application. By this Amendment, Applicants editorially amend claims 1-4, 6-16, 20-35, and 39-40 to better conform them to U.S. patent practice. However, the amendments to these claims do not narrow the literal scope of the claims in any way and thus do not create an estoppel in the application of the doctrine of equivalents.

Formal Matters

Applicants thank the Examiner for acknowledging the claim to foreign priority and receipt of the priority document. Applicants also thank the Examiner for considering the references cited in the Information Disclosure Statement filed on July 29, 2003.

Objection to the Drawings

The drawings are objected to under 37 C.F.R. § 1.83(a) for failing to show the labels in figure 1, as described in the specification. In view of the replacement sheet being submitted with the Amendment, Applicants respectfully request the Examiner to withdraw the rejection to the drawings.

Objection to the Specification

The Examiner has objected to the specification due to minor informalities. In view of the self-explanatory amendments to the specification made herein, Applicants respectfully request the Examiner to withdraw the objection to the specification.

Objection to the Claims

The Examiner has objected to claims 1-40 due to informalities. The informalities noted by the Examiner have been corrected. Thus, withdrawal of this objection is respectfully requested.

Claim Rejections – 35 U.S.C. § 112

The Examiner has rejected claims 1-40 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. In view of the claim amendments made herein, Applicants respectfully submit claims 1-40 comply with the requirements of 35 U.S.C. § 112.

Claim Rejections - 35 U.S.C. § 102

Claims 1-4, 8, 9, 12, 13, 17-23, 27, 28, 31, 32, 36-40 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0058797 to Izmailov *et al* (“Izmailov”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 1-4, 8, 9, 12, 13, 17-19, 39, and 40

Applicants respectfully submit claim 1 is patentable over the references. For example, claim 1 recites a method of determining data routing paths in a communication network, the method comprising, *inter alia*, *calculating possible paths* between a departure node and an arrival node, and *assigning each possible path a value of interest* allowing for an ideal solution. The Examiner contends that paragraphs [0039] and [0055], along with Table 1 of Izmailov disclose these features. Applicants respectfully submit that the teachings of Izmailov are being misinterpreted in the Office Action.

Izmailov is directed to a system and method for path provisioning in a network. The method, a sequential path shifting (SPS) algorithm, calculates an optimal path for a selected class

in a Differentiated Service (DiffServ) domain (*See Izmailov: Abstract, and page 3, paragraph [0038]*). In the Office Action, the Examiner specifically alleges that the selection of “a non-selected class from a plurality of differentiated service classes (see Table 1 in paragraph 0055), that have criteria stated in the Performance Bounds column...can be interpreted as assigning a value of interest in the possible paths that meet the criteria (Office Action, page 7, lines 2-6). However, nowhere does Izmailov disclose or suggest that the SPS algorithm *assigns* each calculated *possible path a value of interest* as set forth in claim 1.

For instance, Izmailov states that the path provisioning method is performed separately for each DiffServ class in a *sequential* manner, from the most stringent class, the expedited forwarding (EF) class, to the least stringent class, the assured forwarding-4 (AF-4) class (Izmailov, page 4, paragraph [0054], lines 1-5). Further, in reference to figure 5, Izmailov states that in the initial step of the method, a class having a highest priority that has not yet been selected is selected, for which an optimal path will be calculated (Izmailov, page 5, paragraph [0060], lines 6-9). Here, as the Examiner admits in the Office Action, the priority is based on the performance bounds field of Table 1 (Izmailov, page 4).

Clearly, the *performance bounds field* is accounted for in order to select a class, *prior to any calculation of a path*, by the SPS algorithm. It is respectfully submitted that the performance bounds field may not be construed as “a value of interest” assigned to each calculated possible path as set forth in claim 1, since no paths have been calculated by the SPS algorithm in the first step of the algorithm, where the algorithm takes into account data from the performance bounds field.

As such, Applicants respectfully submit claim 1 is patentable over Izmailov and request the Examiner to withdraw the 35 U.S.C. 102(e) rejection.

Since claims 2-4, 8, 9, 12, 13, 17-19, 39, and 40 depend on claim 1, Applicants respectfully submit claims 2-4, 8, 9, 12, 13, 17-19, 39, and 40 are patentable *at least* by virtue of their dependency.

Claims 20-23, 27, 28, 31, 32, and 36-38

Claim 20 recites a device for determining data routing paths in a communication network, wherein the device includes processing means, the processing means comprising, *inter alia*, a calculation module which *calculates possible paths* between a departure node and an arrival node, and an assignment module which *assigns each possible path a value of interest* allowing for an ideal solution. Therefore, Applicants respectfully submit that claim 20 is patentable for *at least* reasons similar to those given above with respect to claim 1.

Since claims 21-23, 27, 28, 31, 32, and 36-38 depend on claim 1, Applicants respectfully submit claims 21-23, 27, 28, 31, 32, and 36-38 are patentable *at least* by virtue of their dependency.

Claim Rejections –35 U.S.C. 103

Claims 5-6 and 24-25

Claims 5-6 and 24-25 rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Izmailov in view of U.S. Patent No. 7,023,806 to Gunluk. For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 5-6, and 24-25 depend on claims 1 and 20, respectively, and since Gunluk does not cure the deficient teachings of Izmailov with respect to claims 1 and 20, Applicants respectfully submit claims 5, 6, 24, and 25 are patentable *at least* by virtue of their dependency.

Claims 7 and 26

Claims 7 and 26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Izmailov in view of U.S. Patent No. 6,646,989 to Khotimsky *et al* (“Khotimsky”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 7 and 26 depend on claims 1 and 20, respectively, and since Khotimsky does not cure the deficient teachings of Izmailov with respect to claims 1 and 20, Applicants respectfully submit claims 7 and 26 are patentable *at least* by virtue of their dependency.

Claims 14-16 and 33-35

Claims 14-16 and 33-35 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Izmailov in view of U.S. Patent Application No. 2003/0021233 to Fabre *et al* (“Fabre”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Applicants respectfully submit that Fabre fails to qualify as prior art with respect to the instant application. Applicants note that the instant application and Fabre were, at the time the invention of the instant application was made, commonly owned by Alcatel. It is further noted that Fabre is prior art only under 35 U.S.C. §102(e). Pursuant to 35 U.S.C. §103(c), subject matter developed by another person, which qualifies as prior art only under 35 U.S.C. §102(e) shall not preclude patentability where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same entity or subject to an obligation of assignment to the same person. Therefore, Fabre can not preclude patentability of the instant application under the provisions of 35 U.S.C. § 103(c).

As such, Applicants respectfully request the Examiner to withdraw the 35 U.S.C. § 103(a) rejection of claims 14-16 and 33-35.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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